

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
JAHNE HUPY, )  
 )  
Complainant, )  
 )  
and )  
GEORGE R. ARIYOSHI, Governor, )  
GEORGE A. YUEN, Director of )  
Department of Health, and )  
DONALD BOTELHO, Director of )  
the Department of Personnel )  
Services, )  
 )  
Respondents. )

Case No. CE-09-23  
Order No. 75

ORDER REVOKING ORDER NO. 56  
AND GRANTING MOTION TO SUSPEND DETERMINATION

On June 4, 1976, the attorney for Complainant filed with this Board a Motion to Suspend Determination in the above-entitled and numbered case until a determination is made in HPERB Case No. RA-09-26.

On June 16, 1976, by Order No. 56, this Board denied said motion because no cogent reasons or authorities were provided in support of said motion.

However, in the interest of justice and based upon its own research of the law, this Board hereby revokes Order No. 56 and grants the aforesaid motion.

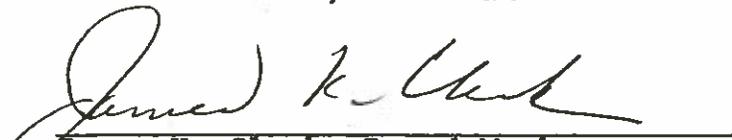
The Board has concluded that in a prohibited practice case involving charges of discrimination against an employee, when a defense based upon the exclusion or excludability from a collective bargaining unit of the employee is made, it will allow the status of the employee to be reconsidered. Heights Funeral Home, Inc. v NLRB, 385 F2d

879, 67 LRRM 2247 (5th Cir. 1967); Amalgamated Clothing Workers of America v NLRB, 365 F2d 898, 62 LRRM 2431 (D.C. Cir. 1966).

In the instant situation, granting Complainant's motion to suspend the decision in Case No. CE-09-23 pending a decision in Case No. RA-09-26 will accomplish the same purpose as would have been served if Complainant had been permitted to litigate her status as an excluded employee in Case CE-09-23.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: September 30, 1976

Honolulu, Hawaii